

DOCKET NO. LLI-CV19-5011465-S : SUPERIOR COURT  
FISHER HOUSE FOUNDATION, INC., ET AL. : J.D. OF LITCHFIELD  
VS. : AT TORRINGTON  
KEVIN E. CREED, ET AL. : APRIL 4, 2019

**DEFENDANTS’ OBJECTION TO PLAINTIFFS’ MOTION FOR APPOINTMENT OF  
TEMPORARY RECEIVER**

The Defendants, KEVIN E. CREED and THE CREED LAW FIRM LLC, hereby object to the Plaintiffs’ Motion for Appointment of Temporary Receiver (docket entries no. 119 and 120).

**BACKGROUND AND PROCEDURAL POSTURE**

The Plaintiffs’ Motion is only the most recent in a series of submissions to this Court that attempt to bypass the judicial process and find against the Defendants on the allegations in the Complaint – which are, at this early stage of the litigation, still only allegations. Instead, the Plaintiffs prefer a rush to judgment, which is abundantly clear in the statements liberally sprinkled in their Motion which presume a verdict for the Plaintiffs (the Defendants “betrayed” the Plaintiff charities; “Defendants’ egregious conduct”; “Defendant Creed embezzled”; “outright theft”; “Defendant Creed cannot be trusted”; “years of malfeasance”; “Defendant Creed [acted with] audacity and mendacity to use Friends [of Fisher House CT]...while at the same time he was stealing from it”). These statements are so outrageous that a casual reader of the Motion – which is readily available to the public on the judicial website – could conclude that the Defendants had in fact already been held liable, which is clearly not the truth.<sup>1</sup>

---

<sup>1</sup> It is worth noting that this scenario has already occurred. An article appeared in the Waterbury Republican-American newspaper on March 6, 2019, which so convincingly repeated the Plaintiffs’ allegations that the newspaper later printed a clarification, stating that “[a]n earlier version of this article about allegations of embezzlement against attorney Kevin Creed, a Litchfield resident with offices in Bristol, could have led readers unfamiliar with the process to misunderstand the state of the lawsuit filed against him by The Friends of Fisher House of Connecticut.”

The Plaintiffs' present effort to appoint a receiver is entirely in step with this strategy. The appointment of a receiver is inappropriate for three reasons. First, appointment of a receiver is a drastic step for this Court to take, and would destroy the expectation of confidentiality between attorney and client to which the present and future clients of the Creed Law Firm are entitled. Second, there exist other, less restrictive alternatives that would accomplish the Plaintiffs' objectives without interfering in the operation of the Creed Law Firm, or in Attorney Creed's ability to practice law. Third, there are less restrictive measures already in place to protect the property in dispute from waste or loss.<sup>2</sup>

## **ARGUMENT**

### **1. A receivership is a drastic remedy that is inappropriate in a law firm environment.**

The powers of a receiver are enumerated in C.G.S. § 52-507 (a):

Receivers of a corporation, appointed by judicial authority, shall have the following rights and powers: (1) The right to the possession of all the corporation's books, papers and property; (2) the power in their own names, or in the corporation's name, to commence and prosecute civil actions for and on behalf of the corporation; (3) the right to defend all actions brought against the corporation or them; (4) the right to demand and receive all evidences of debt and property belonging to the corporation, and to do and execute in the corporation's name, or in their names as receivers, all other acts and things necessary or proper in the execution of their trust; and (5) all the powers for any of the above-mentioned purposes possessed by the corporation.

The Connecticut Supreme Court has long recognized that the appointment of a temporary receiver is a drastic remedy. See Clark v. Aiudi, Docket No. X04-HHD-CV-14-6058089-S,

---

<sup>2</sup> The Defendants do not dispute the Plaintiffs' argument that an interest in a limited liability company is subject to attachment in satisfaction of the prejudgment remedy. However, their reliance on *P.B. Real Estate, Inc. v. Dem II Properties* for that proposition is misplaced and irrelevant based on the facts presented in the instant action. The issue in that case was not whether an interest in a limited liability company could be attached at all, but rather whether the amount paid by the LLC to its two Member/Managers at issue was a distribution because the LLC's own operating agreement required the Manager to authorize any distributions. The court disagreed with the Member/Managers' argument that, because they had not so authorized it, there had been no distribution. See P.B. Real Estate, Inc. v. Dem II Properties, 50 Conn.App. 741, 747-48, 719 A.2d 73 (Conn.App. 1998).

Superior Court of Connecticut, Judicial District of Hartford, Complex Litigation Docket (November 6, 2015, David, J.), citing *Massoth v. Central Bus Corp.*, 104 Conn. 683, 695, 134 A.2d 236 (1926). Therefore, "[t]he availability and adequacy of another remedy is . . . a consideration to be carefully weighed in deciding whether a receiver is necessary. If it appears that some expedient action or remedy, less stringent in effect than a receivership, will meet the situation, that course should be taken (internal quotation marks omitted)." Id., citing *Olechny v. Thadeus Kosciuszko Society of Thompsonville, Conn., Inc.*, 128 Conn. 534, 540, 24 A.2d 249 (1942); see also *Shorrock v. Law*, Superior Court, Judicial District of Stamford-Norwalk, Docket No. CV-96-0151339-S, 1996 Conn. Super. LEXIS 3037 (November 14, 1996, Karazin, J.) (finding modification of prejudgment remedy order less drastic and better suited for the case than appointment of receivership).

Moreover, similar to the nature of the prejudgment remedy itself, the appointment of a temporary receiver does not constitute adjudication of the ultimate issues in a litigation. "The object of appointing receivers is to secure the property in dispute from waste or loss. It is not the office of a court of equity to appoint receivers as a mode of granting ultimate relief. They are appointed as a measure ancillary to the enforcement of some recognized equitable right (internal citations omitted)." See *Hartford Federal Savings & Loan Ass'n v. Tucker*, 196 Conn. 172, 175, 491 A.2d 1084, cert. denied, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed.2d 258 (1985).

Putting aside the drastic nature of appointing a temporary receiver for a moment, the statutory powers of a receiver are particularly detrimental to a law firm. The receiver would have the power to access, possess and review the law firm's "books, papers and property", which would improperly insert the receiver into the relationships between Attorney Creed and his clients. The Plaintiffs specifically refer to "at least 17 cases currently pending in the Superior

Court ..... [and] other personal injury cases which are pre-suit.” See Plaintiffs’ Motion at p. 7. The fact that the Defendants represent those seventeen clients is easily ascertainable from the judicial website, as is the nature of the cases through reviewing the pleadings and other filings. However, any information beyond that – such as publicly unknown information regarding the cases, Attorney Creed’s impressions, strategies, and work product, and settlement negotiations – are squarely within the protection of attorney-client privilege. Certainly, cases which are “pre-suit” would fall even more squarely into that protection as well.

The Plaintiffs argue that they are not requesting “any significant infringement on Defendant Creed’s ability to practice law.” See Plaintiffs’ Motion at p. 7. However, it is impossible to see the appointment of a receiver as anything but a significant infringement on Attorney Creed’s ability to practice law, and the aggrieved parties here are the Defendants’ current and future clients who will no longer have the freedom to be candid with their attorney.

This is illustrated by the case law in this state, in which there is **no** reported case of a receivership over a law firm. Courts in other states have, conversely, appointed receivers over law firms that are ending the practice of law and winding up their business activities. This is not the case here, as Attorney Creed is actively engaged in the practice of law, with no plan to begin any winding-up process.

2. There are less restrictive alternatives that would accomplish the Plaintiffs’ objectives.

Another less drastic measure that is also open to the Plaintiffs is the modification of the existing prejudgment remedy, or the application for a second prejudgment remedy, against the Creed Law Firm. The Plaintiffs’ original application for the prejudgment remedy specifically named Attorney Creed only, likely because the Plaintiffs anticipated finding the amount they allege was misappropriated sitting in an easily-accessible bank account. However, the failure of

the Plaintiffs to preserve all their options does not now justify the imposition of a draconian remedy, particularly when there are other, less onerous options that are available.

3. Less restrictive measures are in fact already in place.

Pursuant to the terms of the stipulation dated March 11, 2019 (docket entry no. 128), the Creed Law Firm agreed not to pay any funds to Attorney Creed, or his agents, associates, or family members, or make any expenditures outside the normal course of business operations, until this Court rules on the Plaintiffs' Motion. Attorney Creed, under the watchful eye of both his counsel and the Plaintiffs' counsel, has been providing the Plaintiffs with weekly general ledger statements documenting compliance with this stipulation. These statements show deposits into and debits from the law firm's three accounts (operating, IOLTA, and payroll), but do not divulge sensitive client information or otherwise allow outsider access to the law firm's operations. This is an example of a measure that is (a) less drastic than the appointment of a receiver and (b) that is already meeting the Plaintiffs' objectives. Attorney Creed cannot possibly waste or lose assets given this weekly requirement and weekly oversight.

## **CONCLUSION**

The appointment of a receiver in this instance would further Plaintiffs' unfair attempts to rush to judgment and presume guilt. As noted above, Plaintiffs are already assuming a verdict in their favor and have been unabashed in their liberal use of terminology supporting the same in nearly every one of their publicly-available filings with this Court. The appointment of a receiver is a drastic measure. There is a reason why it has never before been employed in a law firm setting in Connecticut. This Court should not take away Attorney Creed's right to manage his business. In fact, during the pendency of this litigation, he should be allowed to earn a living and attempt to repair the damage that has been done to his personal and professional lives by the

Plaintiffs' smear tactics. There are no allegations that he has harmed his clients. There are no allegations that he has misled his clients. There are no allegations that he has performed substandard legal services. Taking away Attorney Creed's ability to practice law at his firm is neither necessary nor appropriate.

WHEREFORE, for all the reasons asserted herein, the plaintiffs' Motion for Appointment of Temporary Receiver should be denied.

Respectfully submitted,  
THE DEFENDANTS  
KEVIN E. CREED AND THE CREED LAW  
FIRM LLC

By:           /s/ Nicole S. Shepter            
Nicole S. Shepter, Esq. (Juris No. 430078)  
Joseph E. Fournier, Esq. (Juris No. 431081)  
Fournier Legal Services, LLC  
64 Thompson Street, Suite B101  
East Haven, CT 06513  
860.670.3535  
[nshepter@jeflegal.com](mailto:nshepter@jeflegal.com)  
[jfournier@jeflegal.com](mailto:jfournier@jeflegal.com)

## **CERTIFICATION**

I hereby certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on April 4, 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served:

Monte Frank  
Pullman & Comley, LLC  
850 Main Street, PO Box 7006  
Bridgeport, CT 06601-7006  
Telephone 203 330 2000  
[mfrank@pullcom.com](mailto:mfrank@pullcom.com)

/s/ Nicole S. Shepter  
Nicole S. Shepter  
Commissioner of the Superior Court